HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO. 7800 OF 2007

BETWEEN:

M. Venkateswara Rao

.....Petitioner

And

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
Home(Police-C) Department,
Hyderabad & two others

.....Respondents

:: O R D E R ::

Counsel for the petitioner : Shri M.Janardhana Rao
for Shri K. Chidambaram

24th April 2007

Per G.S. SINGHVI, CJ

Having failed to persuade the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') to nullify the penalty of

stoppage of one increment with cumulative effect imposed on him, the petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

The Facts:

The petitioner joined service as Sub-Inspector of Police on 16.07.1991. While he was posted in Ganapavaram Police Station, West Godavari District, a departmental enquiry was initiated against him on the following charge:

> " Shri M.Nageswara Rao, Sub-Inspector of Police formerly at Ganapavaram from 14.05.1995 to 04.06.1997 misused the official position by abusing one Ramniklal Rathod S/o Shyamji Rathod of Gujarath for not providing his car for his personal use on 19.09.1996."

Sub-Divisional Police Officer, Gudivada, who was entrusted with the enquiry, submitted report dated 06.05.1998 with the finding that the charge has been proved against the delinquent. A copy of the report was sent to the petitioner. He submitted representation dated 19.06.1998 to contest the finding recorded by the Enquiry Officer. After considering the same, the disciplinary authority passed order dated 18.07.1998 and imposed penalty of postponement of one increment with cumulative effect on the petitioner. The appeal and revision preferred by the petitioner were dismissed by the Director General and Inspector General of Police, Andhra Pradesh and the State Government respectively vide orders dated 23.11.1998 and 04.10.2000.

The petitioner challenged the order of punishment as also the appellate and revisional orders in O.A.No. 84 of 2003. He pleaded that the finding recorded by the Enquiry Officer is not based on any tangible evidence and the order of punishment is totally arbitrary and unjustified.

In the counter filed on behalf of the respondents, it was averred that the enquiry was instituted against the petitioner on the basis of the

finding recorded in the preliminary enquiry report submitted by Additional Superintendent of Police, Eluru. It was further averred that the evidence produced before the enquiry was sufficient for holding the petitioner guilty. According to the respondents, the petitioner had abused Ramniklal Rathode because he declined to provide car for his personal use and, therefore, penalty of stoppage of one increment with cumulative effect was justified.

The Tribunal referred to the evidence produced before the enquiry officer, the finding recorded by him and held that there was no valid ground to interfere with the discretion exercised by the disciplinary authority to punish the applicant (the petitioner herein) who was found guilty of having misused his position as a police officer.

We have heard Shri M. Janardhana Rao, learned counsel for the petitioner and gone through the records. The ambit and scope of the High Court's power for judicial review of disciplinary proceedings and the order of punishment has been considered by the Supreme Court in large number of cases. In **State of Orissa v. Bidyabhushan Mohapatra**[1], the Supreme Court considered whether the High Court can interfere with the order of punishment simply because finding recorded by the enquiry officer in respect of some charges is found to be vitiated by an error of law and whether it can go into the sufficiency and adequacy of punishment. While reversing the order of Orissa High Court, which had allowed the writ petition, filed by the respondent, their Lordships of the Supreme Court observed:

> "But the Court in a case in which an order of dismissal of a public servant is impugned is not concerned to decide whether the sentence imposed, provided it is justified by the rules, is appropriate having regard to the gravity of the misdemeanour established. The reasons which induce the punishing authority, if there has been an inquiry consistent with the prescribed rules, are not justiciable: nor is the penalty open to review by the Court. If the High Court is satisfied that if some but not all of the findings of the Tribunal were 'unassailable', the order of the

Governor on whose powers by the rules no restrictions in determining the appropriate punishment are placed, was final, and the High Court had no jurisdiction to direct the Governor to review the penalty for as we have already observed the order of dismissal passed by a competent authority on a public servant, if the conditions of the constitutional protection have been complied with, is not justiciable. Therefore if the order may be supported on any finding as to substantial misdemeanour for which the punishment can lawfully be imposed, it is not for the Court to consider whether that ground alone would have weighed with the authority in dismissing the public servant. The Court has no jurisdiction if the findings of the inquiry officer or the Tribunal prima facie make out a case of misdemeanour, to direct the authority to reconsider that order because in respect of some of the findings but not all it appears that there had been violation of the rules of natural justice."

In **State of A.P. v. Sree Rama Rao**[2], the Supreme Court indirectly reiterated the proposition laid down in **Bidyabhushan Mohapatra** (supra) and held:

"The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental inquiry against a public servant; it is concerned to determine whether the inquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the inquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of inquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the

conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the inquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding ... under Article 226 of the Constitution."

In **State of Madras v. G. Sundaram**[3], the Constitution Bench of the Supreme Court laid down the following proposition:

> "High Court, in the exercise of its jurisdiction under Article 226 of the Constitution, cannot sit in appeal over the findings of fact recorded by a competent Tribunal in a properly conducted departmental enquiry except when it be shown that the impugned findings were not supported by any evidence. It cannot consider adequacy of that evidence to sustain the charge."

In **State of A.P. v. C. Venkata Rao**[4], a three Judges Bench of the Supreme Court referred to the judgments of **Syed Yakoob** (supra), **Bidyabhushan Mohapatra** (supra), **Niranjan Singh** (supra) and observed:

> "In considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court need not be applied. Even if that rule is not applied by a domestic tribunal in any inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence which the

authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal."

In **B.C. Chaturvedi v. Union of India**[5], the Supreme Court, while considering the appellant's challenge to the order of punishment passed as a sequel to the departmental enquiry held against him, highlighted the limited scope of judicial review by making the following observations:

"Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The disciplinary authority is the

sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of that case."

In **Apparel Export Promotion Council v. A.K. Chopra**[6], the Supreme Court again considered the High Court's power to interfere with the disciplinary proceedings and held:

"It is a settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappreciate the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on *no evidence* or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty.

Further, it is a well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is *not* concerned with the *correctness* of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process.

Judicial review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at, the court, while exercising the power of judicial review, must remain conscious of the fact that if the decision has been arrived at by the administrative authority after following the principles established by law and the rules of natural justice and the individual has received a fair treatment to meet the case against him, the court cannot substitute its judgment for that of the administrative authority on a matter which fell squarely within the sphere of jurisdiction of that authority."

In the light of the above, we shall now consider whether finding of guilt recorded by the Enquiry Officer is legally tenable.

A perusal of the report dated 6.5.1998 shows that the enquiry officer analysed the statements of five witnesses produced by the department, as also the statement of the petitioner, and concluded that the latter had misused his position and abused Ramniklal because the latter could not provide car for his personal use. This is evinced from the following extracts of the enquiry report:

"I have carefully gone through the memorandum of Articles of charge, the statements of P.Ws. 1 to 5 prosecution exhibits P1 to P5, the defence statement of the delinquent S.I., and other records pertaining to O.E. The delinquent has produced one defence witness in his defence, but his statement is of not any use. The following are my findings on the charge.

On receipt of petition bearing No. RC.2451-G-P-96 from Range Office, the Addl. Supdt. Of Police, West Godavari i.e. P.W.5 conducted a preliminary enquiry. During his enquiry he examined P.Ws. 1, 3 & 4 and recorded their statements in

exhibits P2 to P4. Based on his enquiry P.W.5 submitted his report to D.I.G. E/R., in which he confirmed the allegation that the delinquent S.I. abused the son i.e., P.W.2 and petitioner P.W.3 for not lending their Car on phone and also in the petitioner P.W.3 in the police station.

During the O.E., P.W.1 who is worked as a Constable in Ganapavaram Police Station at the time of incident, stated that he went to P.W.3 house to ask for a car for the S.I. He was instructed by the Station Writer to do so. After returning from P.W.1 i.e., petitioner's house he informed the S.I. as to what happened. Therefore, it is clear that the P.C. had gone to P.W.3 only for the S.I. as otherwise he would not report what happened at P.W.3's house directly to S.I. P.W.3 i.e., Nisheet Kumar Rathod has also confirmed that one Constable had been sent by the S.I. to his house for lending their car as 19-9-96 and that one person claiming to be S.I. abused him on 19-9-96. P.W.3 is the petitioner who confirmed that one P.C. had come to this house on 18-9-96 stating that his S.I. needed a car on 19-9-96, and on 19-9-96 a person claiming to be S.I. abused his son and himself in vulgar language for not being able to lend ca car. He denied that he went to the Police Station. Both P.Ws. 2 and 3 have stated that they have not seen the S.I. in person any time. P.W.4 has stated that he did not go to the police station along with P.W.3 and that he told the D.I.G of Police about abusing by the S.I. as requested by some of the village elders. This witnesses has turned hostile.

The defence witness D.W.1's evidence is of no use as he simply stated that on 19-9-96 his car was engaged by the S.I. to go to Vissannapet and he does not say anything as to whether the S.I. abused P.W.2 and 3 or not for not lending their car. In his explanation the delinquent has not stated anywhere that he had not sent P.W.1 to P.W.2 and 3 for lending their car. In all probability the delinquent has sent P.W.1 to P.W.2 and P.W.3 and when P.W.1 reported back that P.W.2 & 3 will not lend their car as it was under repair, the delinquent abused P.W.2 and 3. Under the above circumstances I am of the view that the charge against the delinquent is proved."

In our opinion, the above re-produced finding does not suffer from any legal infirmity. The depositions of P.W.1 to P.W.5 clearly show that the petitioner had misused his position as Sub-Inspector of

Police and abused Ramniklal Rathode because he failed to provide car. No doubt, in his cross-examination, Shri Ramniklal Rathode admitted that he did not see the Sub-Inspector of Police, but this, by itself, is not sufficient for discarding the well-considered finding recorded by the Enquiry Officer that the petitioner had misused his position and abused Ramniklal Rathode because the latter refused to supply car to him for personal use. This Court cannot sit in appeal over the finding recorded by the Enquiry Officer and nullify the order of punishment merely because on re-appreciation of evidence there is a possibility of forming different opinion. That is clearly beyond the scope of power of judicial review vested in the High Court under Article 226 of the Constitution of India.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No. 10008 of 2007 filed by the petitioner for expediting hearing of the writ petition is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

24.04.2007
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[1] AIR 1963 SC 779
[2] AIR 1963 SC 1723
[3] AIR 1965 SC 1103
[4] AIR 1975 SC 2151
[5] (1995) 6 SCC 749
[6] (1999) 1 SCC 759